



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,936	12/23/2003	Leslie E. Smith	P-FILM-603	9398

7590 07/07/2005

Christopher John Rudy
Ste. 8
209 Huron Ave.
Port Huron, MI 48060

EXAMINER

FONTAINE, MONICA A

ART UNIT	PAPER NUMBER
1732	

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

W L

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/743,936	Applicant(s) SMITH ET AL.	
	Examiner Monica A. Fontaine	Art Unit 1732	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: With regard to the restriction traversal, the examiner is maintaining her position. It is noted that the stepwise claim limitations and the material undergoing a change in physical or chemical state, are not required when examining an article, which is limited only by structural limitations. Although an article claim may contain process limitations, article claims are examined solely on the basis of article structure (in this case, the limitations of the article found in the preamble of claim 32). Similarly, the specifics of stepwise process limitations in a process claim do not require the certain article requirements.

With regard to the rejections under 35 USC 103(a), the examiner maintains all rejections.

Applicant contends that Susa does not teach stretching. This is not persuasive because he mentions that his process involves "stretch[ing] to a small extent" in his disclosure in column 1, lines 23-27.

Applicant contends that neither Peterson or Susa teaches "precursors and parts that can be wider than sheets. This is not persuasive because those limitations are not in the current process claims.

Applicant contends that the Peterson and Susa are not combinable because they are in different technical fields. This is not persuasive because both disclosures involve film articles and the reshaping thereof.

Applicant contends that there is no motivation to combine Peterson and Susa. This is not persuasive because Peterson offers a practical method of stretching a film article, and Susa offers a specific film article that is stretched. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to stretch Susa's specific film article using Peterson's stretching method (which is applicable to general films).

Applicant contends that Susa teaches that stretching is undesirable. It is noted that this is a misplaced generalization, as some "small extent" stretching is viewed as acceptable.

Applicant contends that Peterson and Susa do not teach various other dependent claims for the reasons that they do not teach independent claim 10. These reasons have been discussed above.

In response to the rejection of Claim 12, it is noted that the first sentence of this section contained a typographical error, noting PCT Article 33(3). As was easily evident, the rejection was made under 35 USC 103(a), as there would be no reason to use PCT Article 33(3) in an office action relevant to US patent practice.

Applicant contends that Ghosh does not suggest the claimed stretching ratio to obtain a parts-formable sheet stock. This is not persuasive because the possibility of failure at the desired stretching ratio is not excluded by the current open claim language. Even if his articles fail soon after the claimed stretching ratio, it is maintained that he suggests that film articles can be stretched to that extent.

It is unclear why applicant notes that stretching is not a valid technical field for the ordinary artisan. There are entire classes of patents that involve stretching (i.e. Class 254), which would seem to indicate that stretching, indeed, is a worthy area of research and industry.



MICHAEL P. COLAIANNI
SUPERVISORY PATENT EXAMINER